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IN THE

Supreme Court of the United States

SITTING IN EQUITY.

No. 26, Original.

OCTOBER TERM, 1919.

THE COMMONWEALTH OF PENNSYLVANIA,
Complainant,

vs.

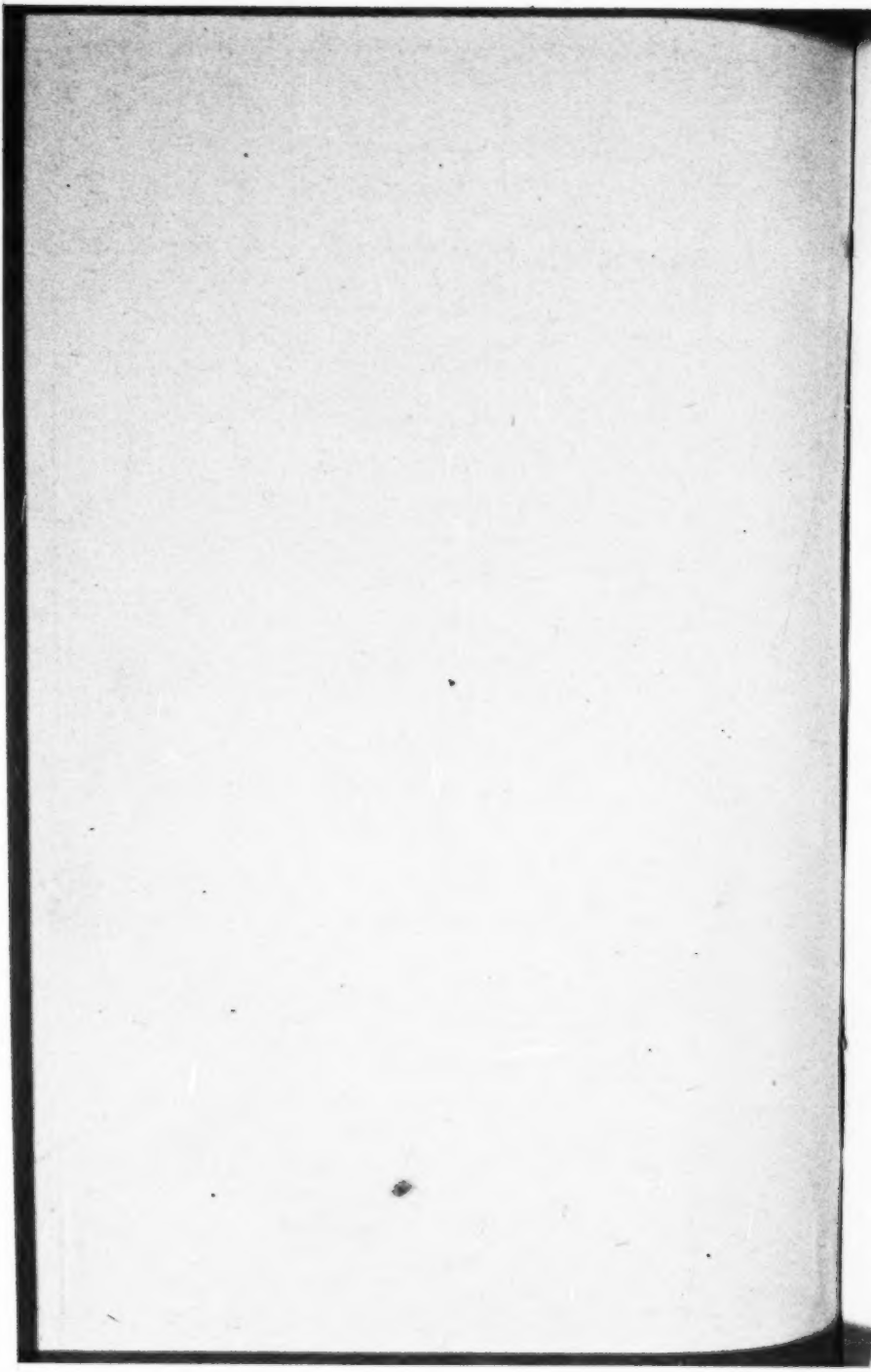
THE STATE OF WEST VIRGINIA,
Defendant.

MOTION TO DISMISS AND ANSWER.

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TRIBUNE PRINTING CO., CHARLESTON, W. VA.



IN THE

Supreme Court of the United States

No. 23, Original.

OCTOBER TERM, 1919.

THE COMMONWEALTH OF PENNSYLVANIA,
Complainant,

vs.

THE STATE OF WEST VIRGINIA,
Defendant.

MOTION TO DISMISS AND ANSWER.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The motion of the defendant, the State of West Virginia, to dismiss the bill of complaint of the Commonwealth of Pennsylvania, complainant, and the answer of said defendant to said bill of complaint.

This defendant, the State of West Virginia, moves to dismiss said bill of complaint, and for cause of said motion shows:

1. That said bill alleges no facts sufficient to confer original jurisdiction upon this Honorable Court.

2. That said bill alleges no controversy between two

States of the Union within the meaning of the Constitution of the United States of America.

3. That the Act of the Legislature of West Virginia entitled, "An Act in relation to persons, firms and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within this state, to provide remedies for the enforcement of this act and penalties and punishment for violations thereof, and to extend the jurisdiction of the public service commission and of the courts of this state with respect thereto," in said bill mentioned, was and is a valid and constitutional law of said State, and did and does violate none of the provisions of the Constitution of the United State or the amendments thereto, in said bill mentioned.

4. That said bill is without equity.

Wherefore, this defendant prays that said bill may be dismissed.

And this defendant, not waiving its said motion to dismiss, and now and at all times saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or to so much or such parts thereof as this defendant is advised it is material for it to make answer unto, says:

I.

This defendant admits that the said Commonwealth of Pennsylvania and this defendant, the State of West Virginia, are States of the United States of America.

II.

This defendant admits that the Legislature of West Virginia passed, on February 10, 1919, and that the Governor of West Virginia approved, on February 17, 1919, an act entitled, "An act in relation to persons,

firms and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within this state, to provide remedies for the enforcement of this act and penalties and punishment for violations thereof, and to extend the jurisdiction of the public service commission and of the courts of this state with respect thereto," which act became effective as a statute of said State, under the constitution thereof, ninety days after its passage, a copy of which statute is hereto attached, made part hereof and marked "Exhibit A", and which statute was and is a valid and constitutional law of the State of West Virginia, and did and does violate none of the provisions of the Constitution of the United States or the amendments thereto, in said bill mentioned.

III.

This defendant says that the facts, circumstances and conditions existing before, at the time of, and since, the passage of said statute, and the evils sought to be remedied thereby were and are, among others, as in this answer hereafter alleged; and the intention and purpose of the Legislature of West Virginia in the passage of said statute, were and are as in this answer hereafter alleged.

Natural gas (hereinafter called gas) is produced by the drilling of wells into gas containing strata or sands in the earth. The known fields in and from which gas is derived are comparatively few and restricted in area. As the number of gas wells drilled in any field increases and the time during which the extraction of gas therefrom lengthens, the volume of the gas and the natural rock pressure, upon which the output depends, gradually diminish not only in the individual wells, but also in the entire field. The constant tendency, therefore, is in the direction of depletion of the field and exhaus-

tion of the gas supply therefrom. And while for a considerable period the aggregate quantity of gas produced from a specfic field may be increased or maintained at substantial uniformity, this can only be accomplished by the drilling of new wells, the added extraction of gas from which still further accelerates the depletion of the field. For this reason it becomes necessary to sustain the output by exploration for new gas territory, and the development thereof when discovered. But even this extension of territory cannot be continued indefinitely, and the later discovered territories themselves are subjected to the same process of depletion and to the exhaustion of their gas. And so it occurs ultimately that the supply of gas, once adequate to the needs of the population dependent thereon, becomes insufficient for the service of all, and the uses of the gas, or the extent of its distribution and consumption, must be correspondingly curtailed. The foregoing was the experience of the States of Pennsylvania, Ohio and Indiana, where the extensive development and utilization of their own gas, and the manifest tendency thereof to exhaustion, preceded the commencement of the transportation of West Virginia gas to other States, hereinafter mentioned. And this experience of Pennsylvania, Ohio and Indiana, now in course of duplication in West Virginia, was well known to the gas companies hereinafter mentioned, before and at the time of the commencement of their business; and it was equally known to the people of those States for whose consumption the gas from West Virginia was and is so transported, since that gas was and is furnished to them in aid of, or substitution for, the failing or exhausted gas of their own States.

Gas is, and for more than twenty-five years last past has been, produced and consumed as fuel for the production of light and heat, both domestic and industrial, in West Virginia. Said State is, and for more than twenty years last past has been, one of the principal gas pro-

ducing States, and the volume of its production is, and for ten years last past has been, the largest in the United States. At the present time gas is produced in large quantities in and from the counties of Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Gilmer, Hancock, Harrison, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mingo, Monongalia, Nicholas, Ohio, Pocahontas, Pleasants, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel, Wirt and Wood, being thirty-two of the fifty-five counties of West Virginia. And there is possibility of the existence of gas in other counties of said State.

The commercial production and utilization of gas in West Virginia were originally, and for a number of years essentially lical in character, especially in the northern part of the State, wherein the earliest development occurred. Wells there drilled for petroleum oil in some instances discovered gas in paying quantities, and this was followed by the drilling of wells having as their primary object the production of gas. The volume of gas thus produced was very large; and the gas possessed a high natural rock pressure, enabling it to be transported through pipe-lines for a considerable distance without artificial compression or other means. In the beginning the chief mode of utilization was the distribution of the gas to consumers within the vicinity of the wells. The owners of the output, ordinarily through the medium of corporations organized under the laws of the State of West Virginia, obtained franchises from nearby cities and towns, and constructed pipe-lines, and engaged in the business of public gas service for domestic and industrial purposes to the inhabitants of the municipalities and those along the pipe-lines. The original local production and utilization of gas were speedily followed by further exploration, development and production in the same and other sections, until it

came about that gas was and is produced in the thirty-two counties above named.

The magnitude of the gas supply thus developed and the resultant cheapness of the gas brought to pass important social and industrial consequences in those parts of the State where the gas was produced, or to or through which it was transported by the pipe-lines. Prompt recognition of the superior advantages and economy thereof for lighting and heating soon led to the almost universal adoption of gas as the exclusive fuel for dwelling houses, business buildings, churches, schools, colleges, hospitals, asylums, court houses, electric light and power plants, water works, municipal street lighting, and the other buildings, institutions and public utilities of the municipalities, counties and State throughout the greater part of West Virginia, although later illumination by gas was supplanted by electric lighting in many places. In the then existing dwellings and buildings the means and appliances for the consumption of other fuels were generally discarded, and new houses and buildings were in general constructed and equipped with a view to the exclusive utilization of gas for heating, and, in many instances, for illumination. The quantity of gas was so great that a very large supply was also available for industrial purposes at low prices. By reason thereof the existing industries adopted gas as their fuel, and a great number of new factories and other industries, to which abundant and cheap fuel was important, were established in the sections where the gas was available, both by citizens of West Virginia and by other persons who were attracted to said sections by the gas supply. The local gas companies in many instances, in order to upbuild the cities, towns and communities served by them, and thereby to stimulate the consumption of their gas, pursued for many years the policy of encouraging the location of new factories and industries in their localities by the offer of gas at low prices during long periods

of time. The factories and industries thus established, were located and constructed for, and their processes and products especially adapted to, the use of gas as fuel. They employed many workmen and laborers, both skilled and unskilled, many of whom came from other states and countries, and who were dependent for their employment and the livelihood of themselves and their families on the existence and continued operation of the gas using factories and industries. The population of the cities, towns and communities so supplied with gas, and of the State as a whole, thus increased; and the added population at once profited the gas companies by adding to the consumption of their gas, and promoted the general prosperity. From this it followed that the domestic life and the business of a majority of the people of West Virginia were and are modified and their adjustments made with reference to the continued use of gas as fuel, and gas in adequate quantities for domestic and industrial use became, was and is a necessity throughout the greater part of the State.

The gas service to the people and industries of West Virginia was reasonably adequate for both domestic and industrial purposes until the winter of 1915-1916. In that winter, and, with increasing frequency and duration, in the winters of 1916-1917 and 1917-1918, shortage of gas occurred in many parts of West Virginia which previously had enjoyed a reasonably adequate supply, including cities, towns and communities located in sections in which, or adjacent to which, gas in large volume was at the time being produced, or through or near which it was being constantly transported by the companies hereinafter mentioned, for consumption in other States. In the coldest weather of the winters aforesaid, the shortage of gas deprived dwelling houses, hotels, stores and public and private buildings of sufficient heat, and, in some instances, of any heat. In the homes and hotels cooking was prevented; and in many cases illness was

caused or accentuated by the cold. Public schools were closed for days at a time. Churches were compelled to forego their customary services. Factories were shut down with great loss to their owners, and their workmen thrown out of employment, with consequent hardship to themselves and their families. While in the winter of 1918-1919 conditions were ameliorated by the comparative mildness of the season, yet the supply of gas for domestic and industrial purposes was inadequate. It became and was apparent from the circumstances hereinafter alleged, that in future winters of ordinary severity the shortage of domestic and industrial gas would recur and increase with like or more serious consequences, whereby the people of West Virginia would be driven to the necessity of installing new heating systems and appliances in their homes and other buildings and institutions aforesaid, and to the necessity of altering their factories and industries, so as to adapt them to the use of coal or other fuel, with all of the attendant and resultant enormities of hardship, inconvenience, expense and economic loss, which in the bill of complaint are predicted as probable consequences to the people of the commonwealth of Pennsylvania in case of the enforcement of the statute in said bill complained of. And it became apparent also, and the fact was, that the existing and prospective shortage of the gas supply to the people of West Virginia was and would be due to the failure and refusal of the companies hereinafter mentioned to perform their duties as public service corporations of West Virginia to the people of West Virginia.

The causes of the existing and prospective shortage of the gas supply to the people of West Virginia were as follows:

When it had been demonstrated by exploration and development that the gas containing areas of West Virginia were large and that their actual and prospective production of gas was great, certain large aggregations

of capital entered and engaged, upon a large scale, in the business of producing gas and purchasing the gas of other producers, in the construction, maintenance and operation of pipe-lines, and other instrumentalities of production, transportation and supply, and in the transportation, distribution and marketing of the gas so held or acquired. These aggregations of capital, either in their original corporate form or in the form later assumed by them, became, were and now exist principally as seven companies, the Hope Natural Gas Company, The Pittsburg & West Virginia Gas Company, Reserve Gas Company, The United Fuel Gas Company, Carnegie Natural Gas Company, The Manufacturers Light & Heat Company of Pennsylvania, and Columbia Gas & Electric Company, (hereinafter referred to as the seven companies), which seven companies hold a virtual monoply of the gas business in West Virginia, controlling the gas territory, the production and supply of gas, the market therefor and the instrumentalities of its transportation. The Hope Natural Gas Company, The Pittsburg & West Virginia Gas Company, Reserve Gas Company, The United Fuel Gas Company and Columbia Gas & Electric Company, are corporations organized and existing under and by virtue of the laws of the State of West Virginia; and the Carnegie Natural Gas Company and The Manufacturers Light & Heat Company of Pennsylvania are corporations organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, duly permitted, in conformity with the laws of West Vrginiia, to hold property and transact business in West Virginia, and under said last mentioned laws having the same rights and powers, and subject to the same liabilities and duties as corporations chartered by or incorporated under the laws of West Virginia. And before and at all times since the incorporation of said West Virginia corporations, and the admission of said Pennsylvania corporations to hold property and transact

business in West Virginia, the right was expressly reserved by statute to the Legislature of said State to alter any charter or certificate of incorporation granted by said State to any corporation, and to alter or repeal any law applicable to any corporation, as well as the laws whereby said Pennsylvania corporations were so admitted to West Virginia.

Said seven companies were and are incorporated for the purposes or objects, and in and by their respective charters or certificates of incorporation did and do have the power, to engage in the public supply of gas in West Virginia, both for domestic and industrial use, and the other uses to which gas may be applied, and to that end to construct, maintain and operate pipe-lines for the transportation of gas. By their corporate character, the nature of the business engaged in by them, and the express denomination of the laws of the State of West Virginia, said seven companies at all times since their incorporation or admission to hold property and transact business in said State have been, and still are, public service corporations of said State, and, in order to enjoy, and in, about and for the exercise of, the special rights and privileges conferred by the laws of West Virginia on public service corporations, have held, and still do hold, themselves out to said State and the people thereof as such public service corporations.

Of said seven companies, the Hope Natural Gas Company and Reserve Gas Company were and are owned or controled by the Standard Oil Company of New Jersey, a corporation, and the Hope Natural Gas Company and Reserve Gas Company were and are substantially managed and operated together. The United Fuel Gas Company and the Columbia Gas & Electric Company are closely identified in ownership, management and control.

Said seven companies (or, in certain instances as hereinafter alleged, their predecessor corporations similarly

incorporated in or admitted to West Virginia) engaged in the gas business in West Virginia, acquired by purchase or lease large areas of territory productive or having a potential value for the production of gas, until gradually they obtained and now hold ownership of a large majority of the valuable territory in the known and prospective gas fields of West Virginia; and in this territory they did and do drill and produce gas from a large number of wells. The acreage in West Virginia owned or held under lease by said seven companies, operated and unoperated, and the number of their producing gas wells, as of the year ended December 31, 1918, were as follows:

	Acres Operated.	Acres Unoperated.	Wells Owned.
Hope Natural Gas Co. ...	318,643.87	803,435.92	3,357
Pittsburg & West Virginia Gas Co.	106,266.25	214,962.00	1,216
United Fuel Gas Co	60,089.69	542,191.93	606
Reserve Gas Co.	48,647.32	7,375.41	689
Carnegie Natural Gas Co.	30,294.00	46,019.75	542
Columbia Gas & Electric Co.	27,685.00	184,595.00	239
The Manufacturers Light & Heat Co.	45,268.25	73,304.74	437
Total	636,894.38	1,871,884.75	7,086

The accumulation of the immense areas aforesaid was rendered possible, and was brought about in large measure, by the domination of the gas fields effected through the pipe-lines and compressor stations hereinafter mentioned. This was accomplished by two processes, often operating concurrently and indistinguishably, in relation to the owners of the gas containing lands and to other priducers of gas in the same field. Said seven companies, by means of their pipe-lines and stations obtained

the virtual control of the gas territory and the output of gas of the other producers, not themselves the owners of or capable of owning such pipe-lines and stations, and themselves not possessed of a local market. Because, as the production increased, there was a large surplus of gas, in excess of the then requirements of nearby municipalities and industries; and for the utilization of such surplus, transportation to more distant points of consumption was essential. But as the construction of pipe-lines and stations was costly, and vast quantities of gas were necessary for their operation, the construction and operation of such pipe-lines and stations were practicable only for said seven companies. And it followed that because of such ownership of pipe-lines and stations, and the absence of other markets, the other producers were compelled to, and did, sell their gas to one of the seven companies at prices dictated by it, and under contracts providing for exclusive sale to such company, the alternative being the hazard of the draining away of their gas by competitive drilling on neighboring lands, generally in the hands of one or more of the seven companies. When, however, such sales were made, the relatively high pressure maintained in the pipe-lines of the seven companies, and the subsequent manipulation of the pipe-line pressure, which could be, and often was, raised or lowered at the will of such company, prevented the discharge into the pipe-line of a large proportion of the normal marketing capacity of the seller's well; and as the price paid for the gas was based on the quantity discharged into the pipe-line, the gas was at once controlled by such company, while the well owner received little or nothing for it. And while the seller was thus prevented from realizing a fair return on his gas, the gas from neighboring wells, owned by such company and draining the territory of the seller was being received in great volume into other lines of such company in which a much lower pressure was maintained. This discouraged the

producer, and minimized his ability to expand his operations, and frequently drove him out of the business of gas production. And in turn the land owner was deprived of the opportunity, which otherwise would have existed, to lease his gas to an independent producer or to obtain the more favorable terms which competitive leasing would have brought about; and thus the land owner was compelled to lease to one of the seven companies or submit to the drainage of his gas by operations on adjacent lands held by them. Nor was this prevented by the statutory provision of the State of West Virginia denominating the owners of pipe-lines common carriers; since the gas of other owners has uniformly been excluded from their pipe-lines until after sale to the pipeline company.

In certain instances, also, said seven companies, by purchase of physical properties or corporate stock, acquired title to, or control of, the territory, wells and production of pre-existing smaller companies operating in the same field. The Manufacturers Light & Heat Company especially was formed by the consolidation or merger of such smaller companies or their properties, and to a varying extent the same is true of all of said seven companies.

Concurrently with, or as an incident to or a consequence of this concentration of the sources of gas production in the hands of said seven companies, the conditions of local gas distribution in the cities and towns were materially affected. In some of the larger cities and towns, as for example, Charleston, Grafton, Huntington and Parkersburg, by purchase of the properties or of controlling interests in the companies engaged in supplying gas to the inhabitants and industries, the franchises, plants, pipe-lines and gas territory of the local companies were acquired. In Clarksburg two competing companies were consolidated or merged, their municipal franchises, plants and part of their territory conveyed to a new company, the majority of the

stock in which was vested in said Standard Oil Company of New Jersey, the owner of said Hope Natural Gas Company; and a large area of highly productive gas territory previously held by one of the pre-existing local companies was transferred to said Hope Natural Gas Company, the ultimate consequence of which was the insufficiency of the territory of the consolidated or merged company for adequate local gas service. In numerous other cases franchises were obtained by said seven companies from cities and towns in West Virginia, or in the case of unincorporated villages and rural communities franchises or privileges in the nature thereof were obtained from the County Courts, and the public distribution of gas for domestic and industrial purposes engaged in. Among the cities, towns and villages thus supplied by said seven companies were and are the following:

HOPE NATURAL GAS COMPANY.

Fairview	Middlebourne	Paden City
Friendly	Parkersburg	Weston
Jacksonburg	Pine Grove	West Union
Laopolis	St. Marys	Wileyville
Littleton	Salem	Williamstown
Lumberport	Sistersville	
Mannington	Smithfield	

THE PITTSBURG & WEST VIRGINIA GAS CO.

Blueville	Grafton	Shinnston
Colfax	Haywood	Simpson
Enterprise	Lumberport	Thornton
Flemington	Pruntytown	Worthington

RESERVE GAS COMPANY.

Camden	Wilsonburg	Reynoldsville

THE UNITED FUEL GAS COMPANY.

Alvoid	Hurricane	Ripley
Barboursville	Kenova	St. Albans
Ceredo	Kermit	Spencer
Charleston	Logan	Wayne
Clendennin	Ravenswood	Williamson
Huntington	Reedy	

THE MANUFACTURERS LIGHT & HEAT COMPANY OF PENNSYLVANIA.

Blacksville	Hundred	New Martinsville
Cameron	McMechen	Newell
Chester	Moundsville	Wierton
Follansbee	New Cumberland	Wellsburg
Glenova		

COLUMBIA GAS & ELECTRIC COMPANY.

Branchland	Griffithsville	Kenova
	West Hamlin	

In respect to the other gas companies, engaged in local distribution to the public, the gas in their own respective territories gradually decreased in volume; and the decline of the natural pressure of their remaining gas eventually rendered it impracticable to transport it without the artificial aid of compressor stations, the great cost of which was practically prohibitive to such local companies. But on the other hand, when the shortage of gas became iminent, the withdrawal of available territory through the extensive ownership of said seven companies within a practicable distance from the localities served by the local companies, prevented the acquisition to any considerable or sufficient extent by said local companies of further territory for present production or future reserves; so that it became increasingly difficult,

and in many instances impossible, for said local companies to supply their deficiencies by operations of their own, or to deliver to their consumers gas in the quantities required by the public need.

From all this the following consequences resulted:

1. Said seven companies attained and now possess a virtual monopoly of the gas supply of West Virginia and the sources of production thereof.

2. Many of the cities, towns, villages and rural communities, their inhabitants and industries became, were and are wholly dependent on said seven companies for their gas supply.

3. Local companies engaged in the distribution of gas to the public, as their sources of supply became inadequate and tended to exhaustion, became, were and are unable to add to or replace their insufficient supply, so that they in turn have become and are dependent on said seven companies for the gas necessary to render an adequate service to their consumers.

The extent of the engrossment of the available gas in West Virginia by said seven companies is illustrated by the following statistics, based on reports to the Board of Public Works of West Virginia, as of the year ended December 31, 1918, which are fairly indicative of conditions in preceding years.

The total production of gas in West Virginia in the year ended December 31, 1918, is authoritatively estimated to have been 280,000,000 M. cubic feet, of which approximately 30,000,000 M. cubic feet were produced and consumed by independent or private consumers engaged in industrial enterprises, owning and consuming gas produced by them and in no way obligated to the service of the public. The remaining 250,000,000 M. cubic feet was the gross amount of West Virginia gas produced or acquired by purchase by the public service gas companies of West Virginia; but therefrom must be deducted about

19,000,000 M. cubic feet used and consumed in and about the drilling of wells and other field operations, so that the total net supply of gas in the hands of said public service gas companies available for public use was about 231,000,000 M. cubic feet. Of the above gross amount produced and acquired and the net amount available for public use, the proportions held by said seven companies, are shown by the following figures taken from the returns made by said seven companies to said Board of Public Works for the year 1918:

	1 Produced in West Virginia. M. cu. ft.	2 Purchased in West Virginia. M.cu ft.	3 Total Handled. M. cu. ft.	4 Interchanges. M. cu. ft.	5 Total Handled Less Interchanges. M. cu. ft.
1. Hope Natural Gas Co.	58,146,971	28,164,183	86,311,154	12,166,754	74,144,400
2. Pittsburg & West Virginia Gas Co.	22,959,495	10,600,161	33,559,656	167,578	33,392,078
3. United Fuel Gas Co.	38,914,067	13,927,481	52,841,548	23,067,983	29,773,565
4. Reserve Gas Co.	31,236,295	1,259,944	32,496,239	10,901,037	21,595,202
5. Carnegie Natural Gas Co.	19,039,353	180,061	19,219,414	191,839	19,027,575
6. Columbia Gas & Electric Co.	4,420,971	11,405,494	15,826,465	.....	15,826,465
7. Manufacturers Light & Heat Co.	6,442,980	13,371,073	19,814,053	.....	19,814,053
	181,160,132	78,908,397	260,068,529	46,495,191	213,573,338
Less Gas used for Drilling Wells and other Production Purposes					11,808,840
Net amount available for public service					201,764,498

The amounts purchased as shown in column 2 include purchases by the said seven companies of and from each other.

Column 4 shows the respective quantities sold by each company to one or more of the other companies.

It follows that said seven companies reduced to their possession about 87 per cent. of the entire supply of West Virginia gas available for public use.

V.

As a prerequisite to the acquisition of gas in the volumes aforesaid, its storage and subsequent transportation to the points of consumption or sale, either within or without West Virginia, beyond the immediate vicinity of the sources of production, it became, was and is necessary for said seven companies to construct and operate a great system of pipe-lines in West Virginia. The number and total length of these lines are enormous, and together they constitute a vast connected system, at once a reservoir and a means for the transportation and distribution of the gas; and they are so connected and operated that the gas may be directed or diverted from one point or line to another at the will of the owner of the pipe-line. The several pipe-line systems of said respective companies are also physically connected in a number of instances in West Virginia. The Hope Natural Gas Company and the Reserve Gas Company, the Hope Natural Gas Company and The United Fuel Gas Company, the Hope Natural Gas Company and The Manufacturers Light & Heat Company, The United Fuel Gas Company and the Columbia Gas & Electric Company, and The United Fuel Gas Company and The Pittsburgh & West Virginia Gas Company are so connected, and by means thereof sales, exchanges and deliveries of gas are made in West Virginia between said connected companies.

The individual pipe-line systems begin with the well lines, consisting of pipes of small diameter, directly connected with the wells, which in turn connect with larger lines or pipes. The gas is finally conducted to and discharged into still larger lines or pipes, commonly called trunk lines or mains, through which the gas is carried

under high pressure (originally afforded by the natural pressure of the gas, but now artificially furnished or added to by compressor or pump stations situate at proper intervals) to the points of distribution for consumption and the points of delivery to the owners of connecting lines. The trunk lines are thus fed by a large number of subsidiary lines, which connect with them at many points throughout their length in the gas producing territory. The gas proceeding from the subsidiary linse into a trunk line, there becomes commingled into a common and homogeneous stock, drawn upon for distribution or delivery at the points of consumption or sale as the owner of the trunk line may desire. In order to accomplish the distribution or delivery of the gas at the points of consumption and sale, other pipes are connected with and branch off of the trunk line at convenient places throughout its length. By means of the branch lines, gas for local consumption is withdrawn from the trunk line and delivered to the local distributing plants or consumers.

Although by the control of the flow of the gas which is maintained by the owner of the trunk line, it may be arranged that a definite proportion or quantity of the whole stock of gas in the pipe line system will reach the point or points of delivery, yet the nature of the gas is such that no mark of identification can ever be placed upon, nor is it possible to identify, any atom or specific quantity thereof; so that until, in the progress of the gas through the trunk line the last connection of a pipe devoted to local service in West Virginia has been passed, it is not and cannot be ascertained whether any particular part of the gas, in the aspect of a physical entity, will be consumed in West Virginia, or will pass to and be consumed in another State. Gas, whether consumed in West Virginia or in other States, is commingled and carried in the same trunk lines of said pipe-line systems.

Based upon the best information obtainable by this defendant, the number, size and mileage in West Virginia of the trunk lines of said seven companies are as follows:

	No. of Lines.	Size of Lines.	Mileage in W. Va.	
Hope Natural Gas Co.	1	20 inch	62.50	
	2	18 "	74.83	
	2	10 "	368.07	
	2	16 "	91.71	
	1	12 "	100.64	697.75
Pittsburg & West Virginia Gas Co.....	1	16 "	186.31	186.31
United Fuel Gas. Co.	1	10 "	114.46	
	1	16 "	78.64	
	1	14 "	45.72	
	1	10 "		
	1	6 "	121.68	360.50
Reserve Gas Co.	2	16 "	68.69	68.69
Carnegie Natural Gas Co.	3	10 "	86.06	
	2	12 "	95.30	181,36
Columbia Gas & Electric Co.	1	20 "	32,70	32.70

Manufacturers Light & Heat Co.—
Only data presently available shows the total mileage of 4 inch and over 614.14

One or more of said trunk lines traverse forty-two of the fifty-five counties of West Virginia, as follows:

Hope Natural Gas Company.

Barbour	Lewis	Taylor
Braxton	Marion	Tyler
Brooke	Marshall	Upshur
Calhoun	Monongalia	Wetzel
Doddridge	Pleasants	Wirt
Harrison	Ritchie	Wood

Reserve Gas Company.

Doddridge	Lewis	Ritchie
Harrison	Pleasants	Wood

Pittsburgh & West Virginia Gas Company.

Braxton	Lewis	Taylor
Doddridge	Marion	Tyler
Gilmer	Monongalia	Wetzel
Harrison	Ritchie	

Carnegie Natural Gas Company.

Doddridge	Marion	Ritchie
Harrison	Marshall	Tyler
Lewis	Monongalia	Wetzel

Columbia Gas & Electric Company.

Cabell	Lincoln	Putnam
	Wayne	

The Manufacturers Light & Heat Company.

Brooke	Harrison	Ohio
Doddridge	Marion	Tyler
Hancock	Marshall	Wetzel
	Monongalia	

United Fuel Gas Company.

Boone	Gilmer	Mason
Cabell	Jackson	Mingo
Clay	Kanawha	Putnam
Calhoun	Lincoln	Roane
Fayette	Logan	Wayne

And along or in such short distance from said trunk lines that the supply of gas therefrom would be easily practicable, are located a great number of cities, towns and villages in West Virginia, now lacking an adequate supply of gas.

The construction and operation of said pipe-line systems were and are essential to the accumulation of said large stocks of gas of said seven companies and the transportation thereof to the points of consumption or sale; and in order to construct, maintain and operate such pipe-line systems, it was necessary for said seven companies to exist as, and perform the duties of, public service corporations, so as to enable them to possess and exercise special rights and privileges, which were and are granted to such corporations by and under the laws of West Virginia. Such special rights and privileges did and do consist of the power of eminent domain, franchises and permits from county courts, cities and towns to construct, maintain and operate their pipe-lines and telegraph and telephone lines in, along and across the public highways and streets, and, in the instances where said seven companies were or are engaged in the local distribution of gas, franchises for such distribution.

The power of eminent domain, enjoyed by said seven companies was and is especially essential to their existence and business. For their pipe-lines could not be constructed, maintained or operated without the taking and damaging of private property for the rights of way for their many miles of pipe-lines and telegraph or tele-

phone lines. But under the law of West Virginia there could be and is no power of eminent domain except in aid of a business, service or works affected with a public use or interest for the benefit of the people of West Virginia; and the right of eminent domain was and is delimited by, and coincides with, the public use or interest which it was and is intended to promote. And in particular, under the laws of West Virginia, it was and is the duty of companies such as said seven companies to serve the public with gas, under reasonable and proper regulations, along the entire line traversed by their pipe-lines at reasonable rates, and without unjust discrimination. In recognition of the importance of the public use or interest with which such pipe-lines were and are affected, such companies, in addition to the ordinary procedure for the condemnation of property which they theretofore were, and still are, entitled to invoke, also have been for twelve years last past, and are, entitled by the laws of West Virginia to condemn rights of way for their pipe-lines by an especially summary and speedy procedure, applicable to no other work of public utility except pipe-lines for tht transportation of oil. This power of eminent domain was exercised by said seven companies in and for the acquisition of their rights of way for their said pipe-lines, both by judicial proceedings in many cases and by the influence of the known existence of said power in negotiations with property owners from whom purchases were affected.

In and about the construction, maintenance and operation of said pipe-lines it was and is necessary, also, in very many places to locate the same along, across or under public highways and streets. But by the laws of West Virginia the power of the county courts and municipal corporations to grant franchises or permits for the construction, maintenance and operation of pipe-lines along, across or under highways and streets was and is

confined to pipe-lines in and for a business, service or works affected with a public use or interest, in like manner as the power of eminent domain. In every eminent domain proceeding and in every application to the county courts and municipal corporations for the franchises or permits aforesaid, said seven companies, therefore, did and do aver, in substance and affect, their public character and their readiness and willingness at all times to furnish, at reasonable rates, gas to all persons within the range of their pipe-lines.

In and about the exercise of the rights and privileges aforesaid, and in the general conduct of their business, said seven companies did and do recognize, and act in accordance with their status or character as public service corporations of West Virginia, except insofar as they have failed and refused, and still fail and refuse, to furnish for the use of the public of said State within the range of their pipe-lines a reasonably adequate supply of gas as herein alleged. And since the enactment of the Public Service Commission Law of West Virginia in the year 1913, said seven companies and all other gas companies serving the public, have been, and they still are, public service corporations within the purview of said law, and have been and are subject to the jurisdiction of said Public Service Commission. A copy of the Public Service Commission Law of West Virginia as now in force and effect, is hereto attached, made part hereof and marked "Exhibit B".

In addition to their business of supplying gas to the public of West Virginia, said seven companies, after the construction of their respective pipe-lines systems aforesaid, also engaged, and are still engaged, in the business of transporting gas to, or for consumption in, other States, principally Pennsylvania, Ohio and Kentucky. A part of said gas, constituting a relatively small propor-

tion of the West Virginia gas consumed in said other States, was and is transported into, and distributed to the consumers therein, by certain of said seven companies. But the greater part of the West Virginia gas consumed in said other States, and substantially all of the gas of several of said seven companies, so consumed, was and is sold for delivery, and was and is in fact delivered, to other gas companies at or very near to the respective boundary lines between West Virginia and said other States, and a large part of said gas was and is delivered to said other companies in West Virginia. Said other companies to whom such sales and deliveries were and are made, themselves distribute said gas, or deliver the same to still other companies for distribution, to the consumers in said other States. This defendant is informed and believes, and on information and belief says, that under the provisions of the contracts under which such sales and deliveries were and are made, the obligation of said selling companies to make such deliveries was and is restricted to the extent of the gas supply of said companies and conditioned upon its ability to deliver the gas to the other company, with which such a contract was made.

At the inception of said business of transporting gas to or for use in other States as aforesaid, the production of the gas fields of West Virginia was increasing, the demands of the communities served by said seven companies were relatively small, and many of the cities, towns and rural communities were supplied by local gas companies, then possessing adequate gas for their then needs, as aforesaid. A very large surplus, therefore, existed for transportation to and consumption in other States, without injury to, or infringement of the rights of, the people of West Virginia. Said conditions continued for many years, until the development of new territory and the production in the known fields no longer

kept pace with the ever increasing demand for gas, and until the natural tendency of the known fields, and of the wells therein, to decline in production and the ultimate exhausion manifested themselves. The proportion of the gas controlled by said seven companies which was transported to or for use in the other States largely exceeded, and does exceed, that supplied by them to the people of West Virginia, and the said porportion in favor of said other States constantly increased, due largely to the growth of consumption in said States, the extension of gas service to new localities and the decline of the production of Pennsylvania and Ohio.

The progressive increase of the consumption of West Virginia gas in other States was as follows:

	Production in West Virginia.	Sold in Other States.
	M. cu. ft.	M. cu. ft.
1908	112,181,278	61,644,618
1909	166,435,092	96,074,387
1910	190,705,869	120,508,811
1911	206,890,576	132,867,059
1912	239,006,682	151,144,250
1913	245,453,985	155,501,875
1914	236,489,175	150,161,936
1915	244,004,159	154,630,164
1916	299,318,907	200,004,740
1917	289,898,967	196,679,263
1918	280,000,000	175,000,000

Illustrative of said disproportion of the gas supply by said seven companies to the people of West Virginia are the following statistics, as of the year ended December 31, 1918, when, even after the aforsaid shortage in West Virginia, had become acute, West Virginia, out of the total public supply of 231,000,000 M. cubic feet, received 29,835,894 M. subic feet, as follows:

	Domestic. M. cu. ft.	Industrial. M. cu. ft.	Local Utilities. M. cu. ft.	Total. M. cu. ft.
Hope Natural Gas Co.	2,573,997	4,254,123	1,592,454	8,420,574
Pittsburg & West Virginia Co.	567,646	2,858,751	51,563	3,477,960
United Fuel Gas Co.	4,142,082	5,837,281	22,402	10,001,765
Reserve Gas Co.	82,605	1,283,178	.....	1,365,783
Carnegie Natural Gas Co.	750,579	.....	119,585	870,164
Columbia Gas and Electric Co.	25,336	23,716	2,013	51,065
Manufacturers Light and Heat Co.	1,494,267	4,153,558	758	5,648,583
Totals	9,636,512	18,410,607	1,788,775	29,835,894

During the same year, typical of conditions in previous years, said seven companies transported to, or for consumption in, other States, 171,928,604 M. cubic feet of West Virginia gas, distributed as follows:

		M. cu. ft.
Hope Natural Gas Co.	Ohio, Pennsylvania	57,027,888
Pittsburg & West Virginia Co.	Pennsylvania.	29,856,653
United Fuel Gas Co.	Ohio, Kentucky	19,000.000
Reserve Gas Co.	Ohio	18,199,043
Carnegie Natural Gas Co.	Pennsylvania	17,904,150
Columbia Gas and Electric Co.	Pennsylvania, Ohio	15,775.400
Manufacturers Light & Heat Co.	Ohio, Pennsylvania	14,165.470
Total		171,928,604

It thus was brought to pass that while the people of West Virginia were deprived of a reasonably adequate supply of gas, out of the total production of West Virginia, available for public use, aggregating 231,000,000 M. cubic feet, 76 per cent. thereof was transported to or for consumption in other States. And out of the 201,764,491 M. cubic feet of said seven companies 85 per cent. was transported to or for comsumption in other States.

The West Virginia gas thus transported did and does constitute over thirty-five per cent. of all the gas consumed in Pennsylvania, and over fifty per cent. of all the gas consumed in Ohio; while at the same time there was and is produced in Pennsylvania approximately fifty-seven per cent of all the gas therein consumed, and there was and is produced in Ohio approximately forty-one per cent. of the gas consumed therein. Approximately seventy-two per cent. of all the gas consumed in Pennsylvania was and is consumed for industrial purposes, and approximately fifty per cent. of all the gas consumed in Ohio was and is consumed for industrial purposes.

VI.

The shortage of gas supply to the people of West Virginia was and is caused by the transportation to or for consumption in other states of enormous quantities of gas by said seven companies as aforesaid. And the said companies did and do refuse to supply the gas required for reasonably adequate service to the public of West Virginia within the range of their pipe lines, or to the local gas companies engaged in the service of said public, under the pretext that they were and are prevented from so dong by the necessities of the gas consuming populations of said other states.

Under these circumstances an issue arose between the State of West Virginia and the people thereof on the one side, and said seven companies on the other. On the one hand it was insisted by said State and its people that they were entitled to a reasonably adequate

gas supply to the extent, for the purposes and by the means later specified in and by the statute complained of in said bill of complaint, and that the duty of furnishing such supply rested on said seven companies as well as the other public service gas companies of West Virginia. On the other hand it was insisted by said seven companies, as they still do insist, that they were and are unable to render additional service or furnish additional gas in West Virginia, either directly to the public or to the local gas companies therein, because of the alleged necessities of the people of said other States and the contracts aforesaid. And said seven companies further contended as they still do contend, that their gas is private property, which they were and are entitled to dispose of when, where and as they choose, and that they owed no higher duty to the State of West Virginia or the people thereof than to the other states and their gas consuming population.

Confronted with the foregoing, among other, facts, circumstances and conditions, and in the light thereof, the Legislature of West Virginia, at its session of 1919, in the exercise of its police and other powers, enacted the statute complained of in the bill of complaint. This statute had and has as its sole and only object, and the sole intention and purpose of the Legislature in enacting the same, was to secure to the inhabitants and industries of West Virginia in said statute mentioned a reasonably adequate supply of gas out of the abundance produced in said State. And in the intention and purpose of said Legislature, as by said statute appears, said statute was and is applicable not only to said seven companies, but also to the other public service gas companies of West Virginia, upon all which like rights and duties are imposed, with a view of securing such reasonably adequate gas supply.

VII.

This defendant further says that all of the losses, injuries and inconveniences, if any, which may happen to said State of Ohio, the people thereof, or said seven or other gas companies, in said bill mentioned, are and will be indirect and consequential upon the just and lawful exercise of the rights and powers of the State of West Virginia, and are and will be *damnum absque injuria.*

VIII.

This defendant admits that said bill of complaint was brought and filed under the authority of the joint resolution of the Senate and House of Representatives of the Commonwealth of Pennsylvania, in said bill mentioned. But this defendant denies all of the recitals, assertions, inferences and conclusions of fact in said resolution contained, insofar as the same are not admitted by, or are inconsistent with, the allegations of this answer; and denies all of the conclusions of law in said resolution contained. Except as in this answer otherwise alleged, the defendant admits the allegations of Paragraph III of said bill.

IX.

This defendant denies that the statute in said bill complained of, or the operation thereof, will discriminate against said Commonwealth of Pennsylvania or the citizens thereof in the transportation of gas from West Virginia into said Commonwealth or otherwise. This defendant denies that said statute, or the operation thereof, will endanger the lives or affect the health of the inhabitants, citizens, wards or dependents of said Commonwealth, in said bill mentioned. This defendant denies that said statute, or the operation thereof,

will affect the comfort or convenience of said inhabitants, citizens, wards or dependents, or cause to said Commonwealth or to said inhabitants, citizens, wards or dependents hardship, loss or expense, except as in this answer alleged. Except as in this answer otherwise alleged, this defendant admits the allegations of paragraph IV and the allegations of sub-paragraph (a) of Paragraph XII of said bill.

While this defendnt admits that gas is or may be an article of interstate commerce, yet this defendant denies that gas placed in mains or pipes by public service gas companies, is either in interstate commerce or a legitimate article of interstate commerce, unless and until it has reached the point where it is no longer subject to the public service in West Virginia, and the duties imposed by law upon public service gas companies have been observed and performed by them; and denies that the requirement of the performance or observance of the duties owed by such companies is an interference with interstate commerce or a burden thereon.

This defendant denies that said statute, or the operation thereof, does or will prohibit, or will in the sense of said bill restrict, the transportation of gas from West Virginia to Pennsylvania or other States.

This defendant admits that by the furnishing of a reasonably adequate supply of gas for the use of the public in West Virginia, as required by said statute, the volume of West Virginia gas available for transportation to, or for consumption in, Pennsylvania and other States, and the quantity of gas so transported, will be indirectly or incidentally diminished, unless said seven companies or other companies shall increase gas production in West Virginia by the development of the large bodies of gas territory at present not operated, and principally in the possession of said seven companies. In case of the failure to increase the production of West

Virginia gas as aforesaid, whether or not the quantity thereof transported to or for use in Pennsylvania or any other State will be appreciably decreased, will depend in a large degree upon the apportionment of the gas transported from West Virginia by said seven companies among other States desiring to consume the same.

This defendant denies that the furnishing of a reasonably adequate supply of gas to the public of West Virginia, as provided by said statute or by reason of the operation thereof, will require or consume any large proportion of the aggregate quantity of gas now transported to or for consumption in other States. Except as in this answer otherwise alleged, this defendant admits the allegations of Paragraph V of said bill.

X.

This defendant says that the time and circumstances of the adoption of gas as fuel for lighting and heating in West Virginia were as in this answer heretofore alleged. This defendant denies that to the extent or in the sense of said bill the population, inhabitants, citizens, wards, dependents, dwelling houses, industrial plants, public buildings, hospitals, institutions, municipalities or counties of Pennsylvania, or said Commonwealth, are dependent upon the use of gas. This defendant admits that many of said persons, buildings, institutions and governmental sub-divisions or agencies have used gas as fuel for a number of years, varying in duration in the respective instances, and still do use gas as fuel; and that many of the dwelling houses, buildings and industrial plants in the gas consuming sections of Pennsylvania have been adapted in construction to the consumption of gas. This defendant denies that in many instances said appliances cannot be used for other fuel; denies that, in the instances of the dwelling houses and

many of the industrial plants in said bill mentioned, other appliances cannot be installed without the reconstruction of said houses and plants. This defendant admits that in many other instances the adaptation of industrial plants or the installation therein of appliances for burning other fuel will require the reconstruction of said plants. But this defendant says that the substitution of other fuels for gas must be accomplished by the same means, and will have the same consequences, in West Virginia as in Pennsylvania, as herein alleged. Except as in this answer otherwise alleged, this defendant admits the allegations of Paragraph VI of said bill.

XI.

This defendant admits that in some instances citizens of Pennsylvania, both individuals and corporations, invested in West Virginia large sums of money in and for the business in Paragraph VII of said bill mentioned, in like manner as many citizens of West Virginia and other States. A very large proportion of said investments were and are investments in said seven companies and other public service gas corporations in West Virginia. This defendant denies that to restrict transportation into Pennsylvania will largely, or in any degree, destroy the market for the gas of said persons or corporations, inasmuch as any diminution of the quantity of gas transported to Pennsylvania will be accompanied by a corresponding increase of the market in West Virginia. This defendant denies that the market value of the property in West Virginia of said persons and corporations, in said Paragraph VII, of said bill mentioned, will be reduced by said statute or the operation thereof. This defendant is without knowledge whether such restriction will greatly, or in any degree, reduce the mar-

ket value of the property, if any, of said persons and corporations elsewhere; but if any such reduction of market value of such property elsewhere does or shall occur, said property so reduced in value was and is property invested in subject to the right and power of the State of West Virginia to legislate in manner and form as in and by said statute it has legislated.

This defendant admits that the cities and towns in Pennsylvania in said Paragraph VII of said bill mentioned, or at least a great many thereof, are being supplied with gas, all or part of which is transported from West Virginia, and to the extent and in the sense in this answer alleged are dependent upon the West Virginia supply. This defendant further says that the number of cities and towns in Pennsylvania supplied with West Virginia gas has progressively increased, concurrently with or as the result of the gradual enlargement of the proportion of West Virginia gas transported into Pennsylvania and other States as hereinbefore alleged. Except as in this answer otherwise alleged, this defendant admits the allegations of Paragraph VII of said bill.

XII.

Except as in this answer otherwise alleged, this defendant admits the allegations of Paragraph VIII and IX of said bill.

XIII.

This defendant says that the tenor and effect of said statute in said bill complained of, and the intention and purpose of the Legislature of West Virginia in enacting the same, were, are and will be as in said statute made manifest and as in this answer alleged, and not otherwise. And this defendant denies each and every of the allegations of Paragraphs X, XI, XII, XIV, XV

and XVI, as well as all the other allegations in said bill, in respect to the tenor or effect of or the intention or purpose of said Legislature in enacting, said statute, insofar as said allegations are inconsistent with the true intent and meaning of said statute and the allegations in this answer in regard thereto.

XIV.

This defendant denies that the necessary operation of said statute prevents interstate commerce with citizens of Pennsylvania, impairs the obligations of contracts with citizens of Pennsylvania, denies to the citizens of Pennsylvania all or any of the privileges or immunities granted by said statute to the citizens of West Virginia, deprives citizens of Pennsylvania of their property without due process of law, or denies to citizens of Pennsylvania within the State of West Virginia the equal protection of the law.

XV.

This defendant denies that said statute violates the rights of said State of Pennsylvania in the manner, or in all or any of the respects, in Paragraph XI of said bill alleged.

This defendant denies that by necessary operation said statute prohibits the transportation of gas from West Virginia into Pennsylvania as in sub-paragraph (a) of Paragraph XI of said bill alleged, although it is true that an indirect or incidental diminution of the quantity of gas so transported may occur as in this answer heretofore alleged. This defendant admits that among the persons, firms and corporations to which said statute is applicable, and to whom it was designed to apply, are all those who, being engaged in the supply

of gas to the public of West Virginia, are also engaged in the transportation of gas into Pennsylvania and other States, but denies that said statute by its terms is applicable, or was designed to apply, to any person, firm or corporation not engaged in the supply of gas to the public of West Virginia. Except as in this answer otherwise alleged, this defendant admits the allegations of said sub-paragraph (a).

This defendant denies the allegations of sub-paragraph (b) of Paragraph XI of said bill. And this defendant says that the West Virginia gas of the persons, firms and corporations in said statute mentioned, required for the reasonably adequate supply of the public in West Virginia, is affected with the use or interest of said public, which is superior and prior to any introduction thereof into interstate commerce, and that this public use or interest cannot be destroyed or limited by the attempt or desire of said persons, firms or corporations to engage in interstate commerce.

This defendant denies the allegations of sub-paragraph (c) of Paragraph XI of said bill. This defendant says that just and reasonable provisions are made by said statute and by the Public Service Commission Law of West Virginia in respect to the amount of, the terms and conditions of service of, and the rates to be paid for, the gas required by said statute to be furnished. This defendant is without knowledge whether any contract of sale of West Virginia gas to consumers in Pennsylvania has been or will be made by any of the persons, firms or corporations in and by said statute, in said bill complained of, required to furnish gas to the public in West Virginia; but any such contract or contracts, if made, were, are and will be made by a relatively small number of said persons, firms and corporations. And this defendant denies that any of the contracts in said bill men-

tioned do or can deprive the State of West Virginia of the power to require the reasonably adequate service of gas to the public thereof, as in and by said statute required.

This defendant denies the allegations of sub-paragraph (d) of Paragraph XI of said bill.

This defendant denies that the effect in general of said statute is to give to all the consumers in West Virginia a preferential or prior right over consumers in Pennsylvania; but admits that the effect of said statute will be to give to all of the consumers in West Virginia, in said statute mentioned, to the extent of the gas therein mentioned, a reasonably adequate supply of gas, and says that said gas is affected with the use or interest of said public of West Virginia as in this answer before alleged. This defendant denies that any contracts of purchase, or rights thereunder, of consumers of West Virginia gas in Pennsylvania, or rights, duties or obligations of any transporter of said gas under contracts for the sale or delivery in or to, or for use in, Pennsylvania, are or will be violated or infringed in any manner by such application of West Virginia gas to the service of said consumers as in said statute mentioned. This defendant further says that the nature and extent of said contracts, the manner in which gas was, is and will be transported to, or for use in, Pennsylvania, and the relation thereof to commerce, either interstate or intrastate, are as in this answer heretofore alleged.

This defendant denies the allegations of sub-paragraph (f) of Paragraph XI of said bill, except as in this answer otherwise alleged.

This defendant admits the allegations of sub-paragraph (g) of Paragraph XI of said bill; but further says that the classification of domestic consumers and industrial consumers, with provision that in case of shortage of gas the domestic must be given preference and the

industrial consumer accordingly cut down or cut off, has been for many years last past, still is, and doubtless will be, in force and effect in West Virginia, in like manner as is alleged by said sub-paragraph (g) of and concerning Pennsylvania.

This defendant admits that for several years last past a number of the gas companies (and especially the local gas companies supplying gas for public use in West Virginia) have been unable to meet the demand of both industrial and domestic consumers, and even of their domestic consumers alone, during periods of lowest temperature. The cause of such inability in West Virginia has been and is, in a large measure, the disproportionate quantities of gas transported to, or for use in, other States, and the virtual monopolization of the West Virginia gas fields by said seven companies, as in this answer heretofore alleged. The cause of such inability in said other States has been and is the inordinate extension of the gas service therein in respect both to the number of consumers and localities, without regard to the available or probable gas supply or the rights of the people of West Virginia. This defendant admits that many of the gas companies have withdrawn, or attempted to withdraw, altogether their industrial classification, and do not hold themselves out as willing to supply industrial consumers. But this defendant denies that the gas companies supplying gas to the public in West Virginia did or do have the right to withdraw their industrial classification or service, except to the extent necessary to furnish a reasonably adequate supply of gas to the domestic consumers of West Virginia. And as hereinbefore alleged a great part of the gas used in Pennsylvania and Ohio is consumed in and for industrial purposes. This defendant admits that gas is peculiarly the fuel best adapted for domestic uses, and more economical and convenient than any other; but this defendant is

without knowledge whether gas is more promotive of health than any other fuel. This defendant admits that the use of gas in some classes of industry is wasteful; but denies that it is wasteful in many other industries. And this defendant says that, in respect to the State of West Virginia, the economy and expediency of the use of gas for industrial purposes, and the relation thereof to the general prosperity of said State, have been conclusively determined by the Legislature thereof in and by said statute.

XVI.

This defendant denies the allegations of said bill which are predicated upon the total or substantially total discontinuance of the supply of West Virginia gas to Pennsylvania. This defendant admits that in case of the diminution of the West Virginia gas transported to Pennsylvania, which diminution will eventually occur from natural causes, irrespective of said statute or the enforcement thereof, said Commonwealth and the other consumers of gas therein will be compelled to modify proportionately and in the end abandon the consumption of gas, unless other sources of supply shall be discovered and utilized.

This defendant says that an inadequate gas service, or the insufficiency in pressure and quantity of gas supplied, is practically equivalent to an entire absence of gas, which fact is equally applicable to and in West Virginia as Pennsylvania. And if and when the gas available for consumption in Pennsylvania shall be so diminished in pressure and quantity that an adequate service cannot be received by all consumers, the remedy therefor must be the contraction by internal regulation of the Commonwealth of Pennsylvania, of the territorial scope of service or distribution and of the number of its consumers.

Such remedy must ultimately be applied in West Virginia, as well as in Pennsylvania, in the natural course of events, irrespective of the enforcement of said statute. This defendant admits that the abandonment of gas consumption, through inadequacy of supply, will occasion inconvenience, loss and expense, and even hardship, to the consumers affected, whether in Pennsylvania or West Virginia. And all of the conditions, inconveniences, losses, expenses, hardships and other consequences which will result to Pennsylvania and its people, in case of the deprivation of an adequate supply of gas, will, in intensified measure and degree result to the State of West Virginia and its people, in case of their deprivation of a reasonably adequate supply of West Virginia gas. This defendant is without knowledge whether or to what extent industrial consumers in Pennsylvania will suffer losses, be placed at a disadvantage with competitors in West Virginia, be restricted in or be cut off from the use of gas, or the length of time required to install appliances suitable for other fuel, if resulting from the enforcement of said statute. Because this defendant says that it is probable that a very large quantity of West Virginia gas will still be available for transportation to, and consumption in, Pennsylvania and other States for a considerable time, notwithstanding the enforcement of said statute; Pennsylvania still produces a large volume of gas, a considerable proportion whereof is used for industrial purposes in Pennsylvania; and the distribution of gas, as between domestic and industrial consumers, in Pennsylvania is a subject for internal regulation by Pennsylvania, and, unless or until so regulated by said Commonwealth, will depend on the policy or will of the gas companies engaged in local distribution. And this defendant says that the existence or extent of the curtailment of gas supply, the inconvenience, loss, expenditures or expenses of or to said Commonwealth or the domestic consumers in, or the counties, municipali-

ties, or political subdivisions of Pennslvania, in consequence of the enforcement of said statute, will depend upon like considerations and contingencies. Except as in this answer otherwise alleged, this defendant admits the allegations of sub-paragraphs (a) and (c) of Paragraph XII and the allegations of Paragraph XIII of said bill.

This defendant admits that in operating gas companies and supplying domestic consumers there is a variation in demand between the warmer and colder days, and that the highest demand is called by the trade the "peak load." This defendant is without knowledge of the degree of such variation or the relative proportion of the peak load to the lesser demand. This defendant admits that even under present conditions the gas companies have great difficulty in supplying the peak load or loads; but this defendant says that the difficulty aforesaid was and is due to the extension of service by said gas companies, resulting in demands of consumers disproportionate to the available and probable supply, and insofar as West Virginia gas is concerned, without regard to the reasonably adequate service of the public of West Virginia. This defendant further says that whether or to what extent, under the changed conditions brought about by the enforcement of said statute, the demands of the consumers in West Virginia will deplete or diminish the supply of gas available for transportation into Pennsylvania, is and will be dependent on the circumstances and contingencies in this answer before alleged.

XVII.

Except as in this answer before alleged, this defendant is without knowledge whether contracts have been made or are now in force, or the terms of any such contracts, by which those corporations which are engaged in transporting gas by pipe lines from West Virginia to, or for

use in, Pennsylvania, have agreed to supply domestic consumers or industrial plants in said Commonwealth with gas for fuel or light, or both, or whether or not contracts have been made or are now in force, or the terms of any such contracts, by which corporations, other than said seven companies in this answer heretofore mentioned, transporting gas by pipe-lines from West Virginia to, or for use in, Pennsylvania, have agreed to supply distributing corporations in Pennsylvania. But this defendant says that the contracts of said seven companies for the sale or delivery of gas to, or for use in, Pennsylvania were and are as in this answer before alleged. This defendant denies that the enforcement of said statute will impair the obligation of such, or any such, contracts, as in Paragraph XIV of said bill alleged, or otherwise. This defendant is without knowledge whether said Commonwealth has contracts of the character in said Paragraph XIV mentioned with gas companies engaged in transporting gas from West Virginia to Pennsylvania.

XVIII.

This defendant denies the allegations of Paragraph XV of said bill. This defendant, however, admits that it is its purpose to enforce the fines, penalties and imprisonments in said statute prescribed against persons refusing to obey such orders of the Public Service Commission of West Virginia as are authorized by said statute, which orders can only be made after due notice and hearing and due process of law as provided by said statute and the Public Service Commission Law of said State; and this defendant further says that by the tenor and effect of said statute, such fines, penalties and imprisonments can be imposed only after such order by said Commission, followed by judicial procedure.

This defendant denies that the citizens of Pennsyl-

vania, if any, affected by said statute, are without direct remedy except by the action of said Commonwealth. This defendant denies that grievous or any wrong will be inflicted upon the citizens of Pennsylvania by the State of West Virginia through the enforcement of said statute.

XIX.

This defendant denies that said Commonwealth of Pennsylvania is entitled to all or any part of the relief prayed in and by said bill. And this defendant prays that the preliminary injunction heretofore issued in this cause may be dissolved.

And this defendant having fully answered said bill, prays to be hence dismissed with its reasonable costs. And as in duty bound, it will ever pray, etc.

THE STATE OF WEST VIRGINIA,

By E. T. Leonard

Its Attorney General.

E. T. Leonard

Attorney General of West Virginia.

Postoffice address: Charleston, W. Va.

Frank B. Lee

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Postoffice address: Clarksburg, W. Va.

Philip P. Stephan

Postoffice address: Clarksburg, W. Va.

William S. Lehr

Postoffice address: Morgantown, W. Va.

Of Counsel for Defendant,

United States of America,
State of West Virginia,
County of Kanawha, } SS:

Edward T. England, being duly sworn, on his oath deposes and says that he is the Attorney General of the State of West Virginia, the defendant named in the foregoing answer, and, as such, he is duly authorized to make this affidavit for and on behalf of said State of West Virginia; that he has read said answer and knows the contents thereof; and that said answer and all of the matters, things and allegations therein contained are true, except as to those allegations, matters and things which are therein stated to be upon information and belief, and that as to such allegations, matters and things he believes them to be true.

E. T. England

Taken, subscribed and sworn to before me this 21st day of October, 1919.

Frank Lively

Notary Public of Kanawha County, West Virginia.
My commission expires on the 26th day of April, 1923.

EXHIBIT A.

AN ACT in relation to persons, firms and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within this state, to provide remedies for the enforcement of this act and penalties and punishment for violations thereof, and to extend the jurisdiction of the public service commission and of the courts of this state with respect thereto.

Be it enacted by the Legislature of West Virginia:

Section 1. That every person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use, or for the use of the public, or any part of the public, whether for domestic, industrial or other consumption, within this state, shall to the extent of his supply of said gas produced in this state, (whether produced by such person or by any other person), furnish for public use within the territory of this state, and for the use of the public and every part of the public within the territory of this state, in or from which such gas is produced, or through which said gas is transported, or which is served by such person, a supply of natural gas reasonably adequate for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed or desired to be consumed by the public, or any part of the public, within said territory in this state, and for which said consumer or consumers therein shall apply and be ready and willing to make payment at lawful rates.

Sec. 2. That in case any person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this state, or for the use of the public or any part of the public within this state, shall have a production or supply of natural gas which is, or probably will be, insufficient to furnish for such use, (for the

purposes, whether domestic, industrial or otherwise, for which natural gas is consumed by the public or any part of the public), within the territory in this state served by such person, then and in that event the public service commission shall have authority, and the same is hereby conferred on it, upon the application of any such person or any of his consumers within this state and after due hearing upon notice and proof to the satisfaction of the commission that public convenience and necessity so require, to order any other person engaged in furnishing, or required by law (whether statutory or common law) to furnish, natural gas for public use within this state, and producing or furnishing natural gas for public use in said territory or transporting the same through said territory, to furnish to such person having such insufficient production or supply, natural gas for the purpose of supplying such deficiency, at and during such times, upon and at such just and reasonable terms, conditions and rates, and in such amounts, as the commission shall prescribe. And whenever, after such hearing upon notice and proof, the commission shall determine that public convenience and necessity so require, the commission shall have authority to provide for and compel the establishment of a reasonable physical connection or connections between the lines, pipes or conduits of such person having such excess supply of gas and the lines, pipes or conduits of the person having such deficiency of supply, and to require the laying and construction of such reasonable extensions of lines, pipes or conduits as may be necessary for the establishment of such physical connection or connections, and to ascertain, determine and fix the just and reasonable terms and conditions of such connection or connections, including just and reasonable rules and regulations and provision for the payment of the costs and expense of making the same or for the apportionment of such cost and expense as may appear just and reasonable. *Provided, however*, that no person shall, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing, or required by law to furnish, natural gas for public use, except to the

extent that the person so ordered to furnish natural gas shall, at the time, have a production or supply of natural gas in excess of the quantity sufficient to furnish a reasonably adequate supply to his consumers within this state; nor shall any person, by virtue of this section, be ordered to furnish natural gas to any other person so engaged in furnishing or required by law to furnish, natural gas for public use in a territory within this state, if and when the said person having said excess shall, to the extent of such excess, be ready and willing to furnish, and within such time as the commission shall prescribe shall actually furnish, to the consumers within said territory a reasonably adequate supply of natural gas.

Sec. 3. That insofar as the same shall not be in conflict with this act, all of the authority, powers, jurisdiction and duties conferred and imposed on the public service commission by the act entitled, "An act to create a public service commission and to prescribe its powers and duties, and to prescribe penalties for the violations of the provisions of this act", passed February twenty-first, one thousand nine hundred and thirteen, as amended by the act entitled, "An act to amend and re-enact sections one, two, three, four, five, nine, ten, fourteen, fifteen and twenty-two, of chapter nine of the acts of one thousand nine hundred and thirteen, creating a public service commission, prescribing its powers and duties, and penalties for violation of the provisions of said chapter, and to add thereto six sections to be known as sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, enlarging the powers and duties of said public service commission, prescribing additional penalties and giving to the commission power to punish for contempt," passed February tenth, one thousand nine hundred and fifteen, are hereby conferred and imposed on the public service commission in respect to the subject matter of this act, or any part thereof.

Sec. 4. That in case of violation of any provision of this act any person aggrieved or affected thereby may complain thereof to the public service commission in like manner, and thereupon such procedure

shall be had, as is provided in respect to other complaints to or before said commission, and all such proceedings and remedies may be taken or had for the enforcement or review of the order or orders of said commission, and for the punishment of the violation of such order or orders, as are provided by law in respect to other orders of said commission. In case of the violation of any provision of this act, the public service commission, or any person aggrieved or affected by such violation, in his own name, may apply to any court of competent jurisdiction by a bill for injunction, petition for writ of mandamus or other appropriate action, suit or proceeding, to compel obedience to and compliance with this act, or to prevent the violation of this act, or any provision thereof, pending the proceedings before said commission, and thereafter until final determination of any action, suit or proceeding for the enforcement or review of the final order of said commission; and such court shall have jurisdiction to grant the appropriate order, judgment or decree in the premises.

Sec. 5. That if any person subject to the provisions of this act shall fail or refuse to comply with any requirement of the commission hereunder, such person shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense; and such person, or the officers of the corporation, where such person is a corporation, may be indicted for their failure to comply with any requirement of the commission under the provisions of this act, and upon conviction thereof, may be fined not to exceed five hundred dollars, and in the discretion of the court, confined in jail not to exceed thirty days. Every day during which any person, or any officer, agent or employee of such person, shall fail to observe and comply with any order or direction of the comission, or to perform any duty enjoined by this act, shall constitute a separate and distinct violation of such order or direction of this act, as the case may be.

Sec. 6. That any person claiming to be damaged by any violation of this act may bring suit in his own behalf for the recovery of the damage from the per-

son or persons so volating the same in any circuit court having jurisdiction. In any such action the court may compel the attendance of the person or persons against whom said action is brought, or any officer, director, agent or employee of such person or persons, as a witness, and also require the production of all books, papers and documents which may be useful as evidence, and in the trial thereof such witness may be compelled to testify, but any such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

Sec. 7. That the word "person" within the meaning of this act shall be construed to mean, and to include, persons, firms and corporations.

Sec. 8. That the sections, provisions and clauses of this act shall be deemed separable each from the other, and also in respect to the persons, firms, corporations and consumers mentioned therein or affected thereby, and if any separable part of this act be, or be held to be unconstitutional or for any reason invalid or unforceable, the remaining parts thereof shall be and remain in full force and effect.

Sec. 9. That all acts and parts of acts in conflict with this act are hereby repealed.

EXHIBIT B.

AN ACT to amend and re-enact sections one, two, three, four, five, nine, ten, fourteen, fifteen and twenty-two, of chapter nine of the acts of one thousand nine hundred and thirteen, creating a public service commission, prescribing its powers and duties, and penalties for violation of provisions of said chapter, and to add thereto six sections to be known as sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, enlarging the powers and duties of said public service commission, prescribing additional penalties and giving to the commission power to punish for contempt.

Be it enacted by the Legislature of West Virginia:

Section 1. There shall be, and there is hereby created, a public service commission of West Virginia, and by that name the commission may sue and be sued.

The public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate, and who shall have and possess all the powers and duties provided in this chapter as hereby amended.

On or before the first day of June, one thousand nine hundred and fifteen, the governor shall appoint three commissioners, who shall be citizens and residents of this state, one of whom shall be a lawyer of not less than ten years actual experience at the bar. Said commission shall immediately enter upon their duties and hold office for two, four and six years, respectively, from the first day of June, one thousand nine hundred and fifteen, the term of each to be designated by the governor, but their successors shall be appointed for the term of six years each, except that any person appointed to fill a vacancy shall

serve only for the term of the commissioner whom he succeeds.

The commissioners before entering upon their duties shall take, subscribe and file with the secretary of state the oath provided by section five of article four of the constitution.

The governor may remove any commissioner for incompetency, neglect of duty, gross immorality or malfeasance in office, giving such commissioner a copy of the charges against him, and an opportunity to be publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all the charges made against such commissioner, and his findings thereunder, together with a complete record of the proceedings; and his decision therein shall be final.

The governor shall annually designate one of the commissioners as chairman thereof.

The concurrent judgment of two of the commissioners shall be deemed the action of the commission when in session as a board, and no vacancy in the commission shall embarrass the right of the remaining commissioners to exercise all of the powers of the commission.

No person while in the employ or holding any official relation to any public service corporation subject to the provisions of this act, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, shall enter upon the duties of or hold said office. Nor shall any of said commissioners be a candidate for or hold public office, or be a member of any political committee while acting as such commissioner; nor shall any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any person, firm or corporation subject to the provisions of this act. In case any of said commissioners shall become a candidate for public office, or shall become a member of any

political committee, his office as commissioner shall be *ipso facto* vacated.

The commission shall appoint a secretary, whose salary shall be not more than five thousand dollars per annum, and all fees and emoluments coming into his hands shall be turned into the state treasury, and such other employees as may be necessary to carry out the provisions of this act, and fix their compensation, who shall hold office during the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all proceedings of the commission, to issue all necessary process, returns and notices, to keep all books, maps, documents and papers ordered filed by the commission, and all orders made by the commission or approved and confirmed by it and ordered to be filed; and shall be responsible to the commission for the safe custody and preservation of all such documents in this office. He may administer oaths in all parts of the state, so far as the exercise of such power is properly incidental to the performance of his duty or that of the commission.

Each of the commissioners shall receive a salary of six thousand dollars per annum, to be paid monthly. The general office shall be kept at the capitol of the state, and kept open each working day between the hours of nine o'clock a. m., and five o'clock p. m., and in charge of the secretary or some other competent person. But hearings and the taking of evidence may be had at such times and places and in each particular case as the commission may designate.

The attorney general shall perform legal service under this act when required by the commission; *provided, however,* the commission in its discretion may employ counsel to look after legal matters of the commission, and fix his compensation, which shall be paid as other employees of the commission.

The terms of office of the public service commissioners now in office, or their successors, unless sooner terminated, shall cease and determine on the thirty-first day of May, one thousand nine hundred and fifteen. (Acts of 1915.)

Sec. 2. The commission shall prescribe the rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful.

In the investigations, preparations and hearings of cases, the commission may not be bound by the strict technical rules of pleading and evidence, but in that behalf it may exercise such discretion as will facilitate their efforts to understand and learn all the facts bearing upon the right and justice of the matters before them.

The commission shall have a seal bearing the following inscription: "The Public Service Commission of West Virginia." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal. (Acts of 1915.)

Sec. 3. The jurisdiction of the commission shall extend to and include,

(*a*) Common carriers, railroads, street railroads, express companies, sleeping car companies, freight lines, car companies, toll bridges, ferries and steam and other boats engaged in the transportation of freight or passengers; and

(*b*) Telegraph and telephone companies and pipe line companies for the transportation of oil, gas or water; and

(*c*) Gas companies, electric lighting companies and municipalities furnishing gas, or electricity for lighting, heating or power purposes; and

(*d*) Hydro-electric companies for the generation and transmission of light, heat or power, and water companies and municipalities furnishing water; and

(*e*) All other public service corporations, and all persons, associations, corporations and agencies employed or engaged in any of the business hereinbefore enumerated.

The words "Public Service Corporation" used in this act shall include all persons, asociations of persons, firms, corporations, municipalities and agencies engaged or employed in any business herein enumerated, or in any other public service business whether

above enumerated or not, whether incorporated or not. (Acts of 1915.)

Sec. 4. Every person, firm or corporation engaged in a public service business in this state shall establish and maintain adequate and suitable facilities, safety appliances or other suitable devices, and shall perform such service in respect thereto as shall be reasonable, safe and sufficient for the security and convenience of the public, and the safety and comfort of its employes, and in all respects just and fair, and without any unjust discrimination or preference. All charges, tolls, fares and rates shall be just and reasonable, and no change shall be made in any tariffs, rates, joint rates, fares, tolls, schedules or classifications in force at the time this act takes effect, except as hereinafter provided. Every railroad company shall permit switch connections for intra-state business to be made with its tracks at suitable and safe points, by other carriers or shippers, upon such terms and conditions as the commission may prescribe, whenever the business to be offered by the connecting company or shipper, in the judgment of the commission, justifies it. Every railroad and other transportation company may be required by the commission to establish and maintain such suitable public service facilities and conveniences as may be reasonable and just; to make reasonable connection with trains on branch lines of such railroads and with all connecting railroad lines; to require any passenger trains to stop at junctions or intersections with other railroads; and may prescribe the number of men required to constitute safe crews for the handling of trains on any steam railroad in this state or any division of any such railroad. No steam railroad shall discontinue any regular passenger train, or other public service facility, or change any regular passenger train schedule or time table, without first obtaining authority from the commission so to do. (Acts of 1915.)

Sec. 5. The commission is hereby given power to investigate all methods and practices of public service corporations or other persons subject to the provisions of this act; to require them to conform to the laws of this state and to all rules, regulations and

orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and time tables in effect and used by such corporation or other person, to be filed with the commission, and all other information desired by the commission, relating to such investigation and requirements.

The commission may compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and such proceedings shall have priority over all pending cases. The commission may change any intra-state rate, charge or toll which is unjust or unreasonable and may prescribe such rate, fare, charge or toll as would be just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism as between persons, localities or classes of freight; *provided*, that the commission shall not reduce any rate, toll or charge within ten years after the completion of the railroad or plant to be used in the public service below a point which would prevent such public service corporation, person, persons or firm from making a net earning of eight per centum per annum on the cost of construction and equipment of said railroad or plant. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost thereof.

Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order, or until revoked or modified by the commission, unless the same be suspended, modified or revoked by order or decree of a court of competent jurisdiction. (Acts of 1915.)

Sec. 6. No public service corporation subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered, than it charges, demands, collects or receives from

any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. (Acts of 1913.)

Sec. 7. It shall be unlawful for any public service corporation subject to the provisions of this act to make or give undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (Acts of 1913.)

Sec. 8. All common carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges or methods or manner of service between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in a like business.

Trunk lines, or principal railroads, shall, in the distribution of cars and the furnishing of facilities, treat industries and shippers, located on and tributary to lateral, industrial or tap lines, as if they were located directly on the track of the trunk lines or principal railroads, and not discriminate between such industries and shippers and those which may be located in direct proximity to their own tracks. And trunk lines or principal railroads shall allow and pay to the lateral, industrial or tap lines, a reasonable and equitable arbitrary or portion of the rate, consistent with the service rendered, giving due consideration to the fact that such lateral, industrial or tap line originates and assembles the freight. But nothing out of the main line rate shall be allowed the shipper

or owner for the use of what may be termed "plant facilities." (Acts of 1913.)

Sec. 9. No person, firm or corporation subject to the provisions of this act shall modify, change, cancel or annul any rate, joint rate, fare, classifications, charge or rental except after thirty days' notice to the commission and the public, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares or charges shall go into effect, unless a written protest is made by the public service commission, in which case the proposed rate shall stand suspended until it is determined by the commission whether or not such proposed rate is just or reasonable. *Provided*, in lieu of the written protest, the commission may enter an order prohibiting such person, firm or corporation from putting such proposed new rate into effect pending the hearing and final decision of the matter and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection; *provided, however*, that the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates, fares or charges, or joint rates, fares or charges, or stating a new individual or joint rate, fare or charge or joint classification or any new individual or joint regulation or practice effecting any fare, rate or charge the commission shall have, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or other form of pleading by the interested parties, but upon reasonable notice to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation or practice; and

pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers or public service corporation affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare. charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, fare, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation or practice had become effective; *provided*, that if any such hearing cannot be conducted within the period of suspension, as above stated, the commission may in its discretion extend the time of suspension for a further period, not exceeding six months. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public service corporation making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case. (Acts of 1915.)

Sec. 10. The commission shall have general supervision of all persons, firms or corporations having authority under any charter or franchise of any city, town or municipality, county court, or tribunal in lieu thereof, or otherwise, to lay down and maintain wires, pipes, conduits, ducts or other fixtures in, over or under streets, highways or public places for the purpose of furnishing and distributing gas, or for fur-

nishing and transmitting electricity for light, heat or power, or maintaining underground conduits, or ducts for electrical conductors, or for telegraph or telephone purposes, and for the purpose of furnishing water, either for domestic or power purposes and of oil and gas pipe lines.

The commission may ascertain the quantity, healthfulness and quality of the water or quality and quantity of gas or electricity supplied by such persons, firms or corporations, and examine the methods employed, and shall have power to order such improvements as will best promote the public interests and preserve the public health.

The commission shall have power, through its members, inspectors, or employees to enter in, upon and to inspect the property, buildings, plants, fixtures, power houses and offices of any such persons, firms, corporations or municipalities, and shall have power to examine the books and affairs to be investigated by it, and shall have the power, either as a commission or by any of its members, to subpoena witnesses and take testimony and administer oaths to any witness in any proceeding or examination instituted before it or conducted by it in reference to any matter within its jurisdiction. The commission shall, when and as necessary, appoint inspectors of gas, electric and water meters, whose duty it shall be when required to inspect, examine, prove and ascertain the accuracy of any gas, electric, or water meters used or intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished to, by or for the use of any person, firm or corporation, and when found to be correct, or made so, the inspector shall stamp or mark each of such meters with some suitable device, which device shall be recorded in the office of the commission. No person, firm or corporation shall furnish or put in use any gas, electric or water meter which shall not have been inspected, proved and stamped or marked by an inspector of the commission. *Provided*, that in case of emergency, gas, electric or water meters may be installed and used before being inspected, but notice thereof shall be immediately given to the public service commission by the public

service corporation installing the same, and such meters shall be inspected, proved and stamped or marked, as soon thereafter as practicable. Every gas, electric and water company or corporation shall provide and keep in and upon its premises suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas, electric and water meters furnished for use by it and by which apparatus every meter may and shall be tested on the written request of the consumer to whom the same shall be furnished, and in his presence if he so desires.

If any person, firm or corporation to or by whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested. If the same on being tested shall be found to be two per cent from being correct, or to the prejudice of the user, the inspector shall order the owner of such meter forthwith to remove the same and to place instead thereof a correct meter, and the expense of such inspection and testing shall be borne by the owner. If the meter, on being so tested, shall be found to be correct, or within two percent of being correct, as above provided, the expense of such inspection and testing shall be borne by the user. A uniform charge and rule shall be fixed by the commission for this service.

Provided, that nothing in this act shall prevent the commission from changing and modifying the method of inspecting meters and adopting such rules and regulations therefor as to the commission may seem just and proper. (Acts of 1915.)

Sec. 11. Any person, firm, association of persons, public officer, public or private corporations, municipality or county, complaining of anything done or omitted to be done by any public service corporation subject to the provisions of this act, in contravention of the provision thereof, or any duty owing by it, under the provisions of this act may present to the commission a petition which shall succinctly state the facts; whereupon a statement of the charges thus made shall be forwarded by the commission to said public service corporation which shall be called upon

to satisfy such complaint or to answer the same in writing within a reasonable time to be specified by the commission. If such public service corporation within the time specified shall make reparation for the injury alleged to have been done, or correct the practice complained of and obey the law and discharge its duties in the premises, then it shall be relieved of liability to the complainant for the particular violation of the law or duty complained of. If such public service corporation shall not satisfy the complainant within the time specified, or there shall appear to be any reasonable ground to investigate the complaint, it shall be the duty of the commission to investigate the same in such manner and by such means as it shall deem proper. (Acts of 1913.)

Sec. 12. Every public service corporation, subject to the provisions of this act, shall file with the commission and keep open to public inspection, schedules, showing all the rates, fares, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it. *Provided, however*, that the reports and tariffs filed by interstate carriers with the public service commission may be copies of its reports and tariffs filed with the interstate commerce commission; but nothing herein shall preclude the public service commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before the said commission and with which it has a right to deal. (Acts of 1913.)

Sec. 13. In all hearings or proceedings before said commission the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the commission or any party to the proceedings before the commission, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And such court in case of refusal to obey the subpoena issued to any person or to any public service corporation subject to the provisions of this act, shall issue an order requiring such public service corporation or

any person to appear before such commission and produce all books and papers, if so ordered, and give evidence touching the mater in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to criminate the person giving the same, shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify. (Acts of 1913.)

Sec. 14. The commission shall collect annually full and complete information of the value of all property owned and controlled by any person or public service corporation subject to the provisions of this act, and tabulate in statistical form and furnish the same to the board of public works on or before the first day of June in each year, which information shall be used by the said board of public works in fixing the value of the property of such person or public service corporation for assessment for the purpose of taxation as provided by law. (Acts of 1915.)

Sec. 15. There shall be paid by all public service corporations subject to the provisions of this act a special license fee in addition to those now required by law. Such fees shall be fixed by the auditor upon each of such public service corporations, according to the value of its property, as ascertained by the last preceding assessment, and shall be apportioned among such public service corporations upon the basis of such valuation, so as to produce a revenue of sixty thousand dollars per annum, or so much thereof as may be necessary, which shall be paid on or before the 20th day of January in each year. Such sum of sixty thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside for the purpose of paying the salaries, compensations, cost and expenses of the commission, its members and employees. (Acts of 1915.)

Sec. 16. Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present his or its petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within thirty days after the entry of such

order, praying for the suspension of such final order. The applicant shall deliver a copy of such petition to the secretary of the commission before presenting the same to the court, or the judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than five days, unless by agreement of the parties, after its presentation, and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner as are just and reasonable. The hearing of the matter shall take precedence over all other matters before the court except the correction of assessments. For such hearing the commission shall file with the clerk of said court all papers, documents, evidence and records or certified copies thereof as were before the commission at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The commission shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right. (Acts of 1913.)

Sec. 17. Every officer, agent, employe, or stockholder of any such public service corporation, and every patron, passenger, shipper or consignee, or other person, who shall violate any provision of this act, or who procures, aids or abets any violation of any such provision by any such public service corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or be confined in jail not more than one year, or both, in the discretion of the court. When any person is convicted of a violation of any provision of this act and it is alleged in the indictment on which he is convicted, and is admitted, or by the jury found

that he has been before convicted of the violation of any provision hereof committed prior to the violation for which the indictment, upon trial was found, then he shall be fined not less than two hundred nor more than two thousand dollars, or be confined in jail not less than thirty days, nor more than one year, or both, in the discretion of the court. When any person is convicted of a violation of any provision of this act and it is alleged in the indictment upon which he is convicted, and is admitted, or by the jury found that he has been twice, or oftener, before convicted of a violation of any provision hereof committed prior to the violation for which the indictment upon trial was found, then he shall be fined not less than five hundred nor more than five thousand dollars, and shall, in addition thereto, be confined in the county jail not less than three months nor more than one year. (Acts of 1913.)

Sec. 18. Any person, firm or corporation claiming to be damaged by any violation of this act by any public service corporation, subject to the provisions of this act, may make complaint to the commission, as provided herein, and bring suit in his own behalf for the recovery of the damages for which such public service corporation may be liable under this act in any circuit court having jurisdiction. In any such action, the court may compel the attendance of any agent, officer, director or employe of such corporation as a witness and require also the production of all books, papers and documents which may be used as evidence, and in the trial thereof such witnesses may be compelled to testify, but any such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify. (Acts of 1913.)

Sec. 19. The secretary shall keep a record of all proceedings, acts, orders and judgments of the commission, certified copies of which shall be admitted as evidence in any court of this state. The commission shall adopt a seal which shall be affixed to all official papers under such regulations as the commission may prescribe. The commission shall likewise prescribe a schedule of fees to be charged for the

certification of all records and papers, and sums to be paid witnesses and other costs necessary and incident to hearings before it and order the same paid by the unsuccessful party. All sums collected by the secretary, except witness fees, shall be paid by him into the state treasury. The witness fees shall be paid to the person to whom they are allowed. The sums to be paid into the state treasury representing the collections of any month shall be so paid on or before the tenth of the following month. (Acts of 1913.)

Sec. 20. Nothing in this act shall be construed to prevent any common carrier from furnishing free transportation to its officers, attorneys, agents and employes, and their families, and like free transportation to the officers, attorneys, agents and employes of other common carriers and their families, mail clerks, expressmen and sleeping car conductors and porters, and reduced rates to all persons engaged in religious, charitable and literary pursuits, and for excursions, and for children and students attending schools and colleges, and for communtation tickets; and, *provided, further,* that nothing in this act shall be construed to prevent telephone, telegraph, sleeping car and express companies from entering into contracts with one another, and with common carriers for the exchange of services, or from exchanging with one another and with common carriers, the privileges of passes or franks for the officers, agents, employes and their families, of such companies and common carriers. (Acts of 1913.)

Sec. 21. The commission may at any time require persons, firms, companies, associations, corporations or municipalities, subject to the provisions of this act, to furnish any information, which may be in its or their possession, respecting rates, tolls, fares, or charges or practice in conducting its or their servce, and to furnish the commission at all times for inspection any books or papers or reports and statements, which reports and statements shall be under oath, when required by the commission, and the form of all reports required under this act shall be prescribed by the commission (except as provided in section twelve hereof), which shall collect, receive

and preserve the same, and shall annually tabulate and publish the same in statistical form, together with the acts and proceedings of the commission. (Acts of 1913.)

Sec. 22. The commission shall have the power to enforce, originate, establish, modify, change, adjust and promulgate tariffs, rates, joint rates, tolls and schedules for all public service corporations, including municipalities supplying gas, electricity or water; and whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of ths act, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls, charges or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of said railroad. (Acts of 1915.)

Sec. 23. Whenever, under the provisions of this act, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this act, or shall find that any service is inadequate, or that any service which can be reasonably demanded cannot be obtained, the commission shall determine and declare, and by order fix, reasonable measurements, regulations, acts, practices or service, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory, inadequate or otherwise in violation of this act; and shall make such other order respecting the same as shall be just and reasonable.

If any public service corporation, or other person, shall fail or refuse to comply with the order of the commission under the provisions of the last two sections, such public service corporation or other person

in addition to the other penalties provided for in this act, shall be subject to a fine not to exceed five thousand dollars. (Acts of 1915.)

Sec. 24. Whenever, after hearing, upon notice, the public service commission shall determine that public convenience or necessity requires that conduits, subways, poles or other equipment on, over or under any street or highway belonging to or used by any public service corporation, should be used in part by another public service corporation for the operation of its property in any locality not reached by the lines or connections of one of said corporations, or a municipality, the said public service commission may, by order, fix the just and reasonable terms and conditions of such use, and prescribe the compensation to be paid therefor.

And, whenever, after hearing, upon notice, the public service commission shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public service corporations regularly engaged in the conveyance of telephone or telegraph messages, for the conveyance of such messages between different localities, which are not reached by the lines or connection of one of said companies, the said public service commission may, by order, ascertain, determine and fix the just and reasonable terms and conditions of such physical connection, including just and reasonable rules and regulations and the just and reasonable charge that shall be made to the public for the use of such continuous line between such localities and the division of the charge between such two or more public service corporations, and the apportionment of the cost of making such physical connection between such public service corporations, and it shall be the duty of such public service corporation thereafter to conform to such order of said public service commission. But no order shall be made by the public service commission under this section to apply where the said use or physical connection will prevent those owning, operating, managing or controlling, any part of such conduits, subways, poles or other equipment, or such

propsed continuous lines of communication, from performing their public duties, nor result in serious injury to those owning, operating, managing or controlling, any part of such conduits, subways, poles or other equipment, or of the proposed continuous line of communication. (Acts of 1915.)

Sec. 25. Such use so ordered shall be permitted and such physical connection or connections so ordered shall be made; and the terms, conditions and compensation so prescribed for such use and such physical connections shall be the lawful conditions and compensation for such use and physical connection, and the lawful terms and conditions upon which such use and physical connections shall be had and made. Any such order may be from time to time revised by the commission upon application of any interested party or upon its own motion. (Acts of 1915.)

Sec. 26. The commission may establish a system of accounts to be kept by public service corporations or classify said public service corporations and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memorandum to be kept by such public service corporations, including the accounts, records and memorandum of the movement of traffic as well as the receipt and expenditure of moneys, and any other forms, records and memorandum which in the judgment of the commission may be necessary to carry out any of the provisions of this act.

The system of accounts established by the commission and the form of accounts, records and memorandum prescribed by it shall not be inconsistent in the case of corporations subject to the provisions of the act of congress entitled "An act to regulate commerce," approved February 4th, 1887, and the acts amendatory thereof and supplemental thereto, with the system and forms from time to time established for such corporations by the Interstate Commerce Commission, but nothing herein contained shall

effect the power of the commission to prescribe forms of acounts, records and memorandum covering information in addition to that required by the Interstate Commerce Commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

Any person, officer, agent or employee of such public service corporation who shall willfully make any false entries in the accounts, books of account, records or memorandum kept by any public service corporation, or who shall wilfully destroy, mutilate, alter or by any other means or device falsify the record of any such account, book of accounts, record or memorandum, or who shall wilfully neglect or fail to make full, true and correct entries of or in such account, book of accounts, record or memorandum of all the facts and transactions appertaining to such public service corporation, or who shall falsely make any statement required to be made to the commission, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or be confined in jail not more than one year or both, in the discretion of the court. (Acts of 1915.)

Sec. 27. Any person or public service corporation, firm or association who shall violate any of the orders or findings of the commission shall be guilty of contempt and the commission shall have the same power to punish therefor as is now conferred on the circuit court, with the right of appeal in all cases to the supreme court. (Acts of 1915.)

Sec. 28. If any person, firm or corporation subject to the provisions of this act shall fail or refuse to comply with any requirement of the commission hereunder, for which a penalty has not been hereinbefore prescribed, such person, firm or corporation shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense; and such person or firm and the officers of such corporation may be indicted for their failure to comply with any requirement of the commission under the

provisions of this act, and upon conviction thereof, may be fined not to exceed five hundred dollars, and, in the discretion of the court, confined in jail not to exceed thirty days.

Every day during which any person, firm or corporation, or any officer, agent or employee thereof shall fail to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this act, shall constitute a separate and distinct violation of such order or direction of this act, as the case may be.

The intermediate and circuit courts of Kanawha county shall have concurrent jurisdiction of all offenses and violations of any of the provisions of this act. (Acts of 1915.)

All acts and parts of acts in conflict with this act are hereby repealed.